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SUPREME COURT OF THE UNITED STATES.

No. 63.

THE MAYOR AND ALDERMEN OF THE CITY OF MOBILE, PLAINTIFFS IN ERROR,

vs.

WILLIAM R. HALLETT, EX'R. OF JOSHUA KENNEDY, DECEASED.

IN ERROR TO THE SUPREME COURT OF THE STATE OF ALABAMA.

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S. D. Langtree, Print.

UNITED STATES OF AMERICA, *ss.*

The President of the United States, to the Honorable the Judge [L. S.] of the Supreme Court of the State of Alabama, greeting:

Because in the record and proceedings, as also in the rendition of the judgment of a plea, which is in the said Supreme Court, before you, or some of you, being the highest court of law and equity of the said State, in which a decision could be had in the said suit, between the Mayor and Alderman of the City of Mobile, plaintiffs, in said Supreme Court, and Wm. R. Hallett, Ex'r. of Joshua Kennedy, defendant, in said Supreme Court, wherein was drawn in question the validity of a treaty or statute of, or an authority exercised under the United States, and the decision was against their validity; or wherein was drawn in question the validity of a statute of, or an authority exercised under said State, on the ground of their being repugnant to the constitutive treaties, or laws of the United States, and the decision was in favor of such their validity; or wherein was drawn in question the construction of a clause of the constitution, or of a treaty, or statute of, or commission held under the United States, and the decision was against the title, right, privilege or exemption, specially set up or claimed under such clause of the said constitution, treaty, statute or commission, a manifest error hath happened, to the great damage of the said Mayor and Alderman of the City of Mobile, as by their complaint appears; we, being willing that error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same at Washington, on the second Monday of January next, in the said Supreme Court, to be then and there held, that the record and proceedings aforesaid, being inspected, the said Supreme Court may cause further to be done therein, to correct that error, what of right and according to the laws and customs of the United States, should be done.

Witness, the Honorable Roger B. Taney, Chief Justice of the said Supreme Court, this 21st day of October, in the year of our Lord one thousand eight hundred and forty.

Allowed by HENRY W. COLLIER,
Chief Justice of the Supreme Court of the State of Alabama.

THE MAYOR AND ALDERMEN of the City of Mobile, *vs.* JOSHUA KENNEDY'S Executor. } 1277.

3024.—Pleas, &c.

Be it remembered, that heretofore, to wit, on the 2nd day of July, 1838, were filed in the clerk's office of this court, a writ of error and transcript of record, in the following words and figures, to wit:

Writ of Error.

THE STATE OF ALABAMA.

To the Clerk of the Circuit Court for Mobile County, greeting:

Because in the record and proceedings, and also in the giving of judgment in a cause which was in our said Circuit Court, by our writ of capias ad respondendum, between the Mayor and Aldermen of the City of Mobile, plaintiffs, and Joshua Kennedy, defendant, of a plea of tresspass to try titles, manifest error hath intervened, to the great damage of the said Mayor and Aldermen, as by their complaint we are informed. We, being willing that the error, if any there be, should in due manner be corrected, and full and speedy justice done to the parties in this behalf, do command you, that if judgment be thereupon given, then you send to our Judges of the Supreme Court, distinctly and openly, under your hand and seal, the record and proceedings of the cause aforesaid, with all things concerning the same, and this writ, so that they may have them before the Supreme Court at Tuskaloosa, on the first Monday in June next, that the record and proceedings aforesaid, being inspected, we may cause to be further done thereupon, for correcting that error, what of right, and according to law, ought to be done. Witness, Malcolm J. McRae, Clerk of our Circuit Court for Mobile County, this 26th day of January, the year 1838.

Issued, 26th day of January, 1838.

Attest: M. J. McRAE, *Clerk.*

THE MAYOR AND ALDERMEN of the City of Mobile, *vs.* JOSHUA KENNEDY.

Pleas before the Honorable Ezekiel Pickens, presiding Judge of the Circuit Court of Mobile County, at a Circuit Court begun and held in and for said County of Mobile, on the first Monday after the fourth Monday of October, 1836.

Be it remembered, that heretofore, to wit, on the first day of September, in the year of our Lord one thousand eight hundred and thirty-five, came the Mayor and Aldermen of the City of Mobile, by their attorney, and sued out of the office of the Circuit Court for Mobile County, a writ of capeas ad respondendum against Joshua Kennedy.

THE STATE OF ALABAMA.

Writ.

The Sheriff of Mobile County, greeting:

You are hereby commanded to take the body of Joshua Kennedy, if to be found in your County, and him safely keep, so that you may have him before the honorable the Circuit Court to be holden for Mobile County, at the place of holding said court, on the first Monday after the fourth Monday of October next, to answer to the Mayor and Aldermen of the City of Mobile, in a plea of trespass to try titles, to their damage, ten thousand dollars; herein fail not, and have you then and there this writ.

Witness, Joseph Bates, jr., Clerk of the said Court, this first day of September, in the year of our Lord one thousand eight hundred and thirty-five.

Issued the first day of September, 1835.

Attest: JOS. BATES, JR. *Clerk.*

Cause of Action.

This suit is brought to try the titles, and recover the possession of several lots of ground, in the City of Mobile, embraced within the following limits, and also for damages for the detention thereof, commencing at a point on St. Louis street, sixty-six feet west of the corner of St. Louis and Water street, thence north twenty-five degrees west, to the line dividing the price claim from the Orange grove claim, thence parallel with St. Louis street eastward, to the channel of the river, thence along the channel of the river, to a point meeting the line formed by the extension of the northern boundary of St. Louis street, thence along the north boundary of St. Louis street, to the place of beginning, excepting so much of Water, Commerce and St. Anthony streets, as may be included in the above boundary, and also excepting a parallelogram of one hundred feet each side, on the southwest corner of St. Louis and Water streets, and also excepting a parallelogram of one hundred feet each side, on the southeast corner of St. Anthony and Water streets, and fifty feet fronting on the east side of Water street, on the corner of *of* Water and St. Anthony streets, and extending to the same depth of fifty feet

along the north side of St. Anthony street, across Commerce street, to the channel of the river.

Attest: WILLIAM HALE, *Atty.*

Rec'd, and executed 2 Sept., 1835.

T. L. TOULNIEU,
Sh'ff Mo. C'ty.

By WM. MAGEE,
Deputy Sheriff.

And afterwards, the plaintiffs, by their attorneys, filed their declaration against the defendants, which is in the words and figures following, to wit:

THE STATE OF ALABAMA, *Mobile County.*

Circuit Court, Fall term, 1835.

Declaration.

The Mayor and Aldermen of the City of Mobile, by attorney, complain of Joshua Kennedy, in custody, &c., in a plea of trespass, with force and arms to try titles; for that the said Joshua, heretofore to wit, on the thirtieth day of August, A. D. 1835, with force and arms, broke and entered a certain close, lot, or tract of land, the property of plaintiffs, situate and lying in the City of Mobile and county aforesaid, and bounded in said city as follows, viz: commencing at a point on St. Louis street in said city, sixty-six feet west of the corner of St. Louis and Water street, thence north twenty-five degrees west to the line dividing the price claim from the Orange grove claim, thence parallel with St. Louis street eastwardly to the channel of the river, thence along the channel of the river to a point meeting the line formed by the extension of the northern boundary of St. Louis street, thence along the north boundary of St. Louis street to the place of beginning, excepting so much of Water, Conmerce and St. Anthony street, as may be included in said boundaries, and also excepting a parallelogram of one hundred feet each side, on the southwest corner of St. Louis and Water streets, and also excepting a parallelogram of one hundred feet each side, on the southeast corner of St. Anthony and Water streets, and fifty feet fronting on the east side of Water street, on the corner of Water and St. Anthony streets, and extending to the same depth of fifty feet along the north side of St. Anthony street across Commerce street, to the channel of the river, and then and there expelled, put out, and amoved the said plaintiffs from the use, occupation and enjoyment of said above described lot of land, and kept and continued them so expelled, put out, and amoved for a long space of time, to wit, from thence hitherto, whereby the said plaintiffs lost and was deprived of the use, occupation of their said lot, to their damage ten thousand dollars.

WM. HALE, *Pl'ffs. Att'y.*

And now at this day, to wit, at a Circuit Court, begun and held in and for the county of Mobile, at the Court-house thereof, on the first Monday after the fourth Monday of October, in the year of our Lord one thousand eight hundred and thirty-six, being the day and year first herein written.

The following Judgment was rendered in said Court, to wit:

THE MAYOR AND ALDERMEN of the City of Mobile, *Plffs.*
vs.
JOSHUA KENNEDY, *Deft.*

Judgment.

This day came the said parties by their Attorneys, and thereupon came the following Jury, to wit: William Calvert and eleven others, good and lawful men, who being duly sworn, tried and elected, upon their oaths do say, "We, the Jury, find the deft. not guilty." It is therefore considered by the Court that the defendant go hence without day, and recover of the plaintiff his costs by him about his defence in this behalf expended.

Mobile Circuit Court, April Term, 1836.

MAYOR AND ALDERMEN of Mobile,
vs.
JOSHUA KENNEDY.
} Trespass to try Titles.

Bill of exceptions.

This cause was tried at the Mobile Circuit Court, of April term, before the Honorable Ezekiel Pickens, one of the Circuit Judges of the State of Alabama. On the trial of the cause, it was among other things proven, the premises which were claimed under an act of Congress entitled, "An act granting certain lots of ground to the Corporation of the City of Mobile, and to certain individuals of said City," passed 26th May, 1824, were situated north of St. Louis street, and were bounded on the west by high water mark, and east by the channel of the river, and that the defendant was claimant in possession of the land lying immediately west, and which extended from some certain boundary eastwardly to the river, and which he held by a Spanish grant confirmed by the United States; it was proven further, that in the year (1824) eighteen hundred and twenty-four, and at the time of the passing the act, Water street terminated below St. Louis street, and that in front of the lands, which it was proved the defendant possessed, in the direction, Water street was not extended or established,

nor was its future course of direction known or in way determined on; whereupon, after having evidence and argument of counsel, the said Judge did charge the Jury that by the true construction of the above referred to act of Congress, the Corporation of Mobile are not entitled to the premises in question, because the defendant possessed by grant originating from the Spanish government the adjacent land extending to the river Mobile, and the claim of the Corporation was for land immediately west of it, extending from high water mark to the channel of the river, to which charge the plaintiffs by their counsel excepts, and prays the Court to sign and seal this his bill of exceptions.

Given under my hand and seal this twenty-ninth day of April, one thousand eight hundred and thirty-six.

EZEKIEL PICKENS, [L. S.]

THE STATE OF ALABAMA, *Mobile county.*

I, Malcolm J. McRae, Clerk of the Circuit Court for Mobile county, in the State aforesaid, do hereby certify that the foregoing six pages contain a true copy from the record and proceedings in the case of the Mayor and Aldermen of the city of Mobile, plaintiffs, against Joshua Kennedy, defendant, as the same remain on file in my office.

In testimony whereof I hereunto set my hand and cause the seal of said Circuit Court to be hereto affixed, this eleventh [L. S.] day of May, in the year of our Lord one thousand eight hundred and thirty-eight.

Attest: M. J. McRAE, *Clerk.*

Upon which writ of error and transcript of record, proceedings were had in the Supreme Court as follows, to wit:

STATE OF ALABAMA, *ss:*

Supreme Court of the State of Alabama, of June term, in the year of our Lord one thousand eight hundred *and hundred* and thirty-eight.

Assg't. of Errors.

MAYOR AND ALDERMEN of the city of Mobile, *vs.* JOSHUA KENNEDY.

And now come into the said Court the said plaintiffs, by William Hale, their attorney, and say that there is error in the said record,

in this, that the charge of the Judge on the trial of the said cause is against law.

And that there is also error in this, that the charge of the said Judge denies that the United States had power to grant the premises in question.

And that there is also error in this, that the said charge of the said Judge maintains that the title to the premises in question is in the said defendant.

WILLIAM HALE,
Att'y. for Deft. and of Counsel.

There is no error in the record.

G. W. STEWART,
Att'y. for Deft. in error.

At June term, 1838, this cause was continued, and now at this day, to wit, at January term, 1839, and on the 7th day of February, 1839.

Present, The Honorable Henry W. Collier, Ch. Justice, and John J. Ormond, Judge.

The following order was made:

Because the Court would further consider of the matters of law arising in these cases, day is given to said parties until the next term of this Court.

At January term, 1839, this cause was continued, and now at this day, to wit, at June term, 1839, and on the 26th day of June, 1839.

Present, The Honorable Henry W. Collier, Ch. Justice, John J. Ormond, Judge.—Judge Goldthwaite not sitting.

This day again came said parties, by their attorneys, and thereupon the record in this cause, and the matters assigned for error therein, having been argued and mature deliberation thereon had, it seems to *to* the Court, that in the record and proceedings of said Circuit Court, there is no error. It is therefore considered that said Judgment of said Circuit Court be affirmed. That said William R. Hallet, Executor of the last will and testament of Joshua Kennedy, deceased, recover of the Mayor and Aldermen of the city of Mobile, the costs of this cause in this Court and in said Circuit Court.

Know all men by these presents, that we, the Mayor and Aldermen, of the city of Mobile, and R. C. McAlpin, are held and firmly bound unto William R. Hallett, Executor of Joshua Kennedy, in the full and just sum of two hundred dollars, to be paid to the said Executor of Joshua Kennedy, his certain attorney, executors, administrators, or assigns; to which payment well and truly to be made, we bind ourselves, our heirs, executors and administrators,

jointly and severally by these presents. Sealed with our seals, and dated this 21st day of October, in the year of our Lord one thousand eight hundred and forty.

Whereas, lately at a Supreme Court of the State of Alabama, in a suit depending in said Court between the Mayor and Aldermen of the city of Mobile, plaintiffs, in said Supreme Court, and Joshua Kennedy, defendant, in said Supreme Court, judgment was rendered against the said Mayor and Aldermen of the city of Mobile, and the said Mayor and Aldermen of the city of Mobile having obtained a writ of Error and filed a copy thereof in the Clerk's office of the said Court, to reverse the judgment in the aforesaid suit, and a citation directed to the said Joshua Kennedy, citing and admonishing to be and appear at a Supreme Court of the United States, to be holden at Washington the second Monday in January, in the year 1841. Now the condition of the above obligation is such, that if the said Mayor and Aldermen of the city of Mobile shall prosecute their said writ of error to effect, and answer all damages and costs, if they fail to make their plea good, then the above obligation to be void, else to remain in full force and virtue.

Mayor and Aldermen of the city of Mobile, by R. C. McAlpin, Attorney.

R. C. McALPIN, [L. S.]

Sealed and delivered in presence of

HENRY W. COLLIER,
Chief Justice of the Supreme Court of the State of Alabama.

I, James B. Wallace, Clerk of the Supreme Court of the State of Alabama, do hereby certify that the foregoing sheets, from page 3 to page 10, contains a full and complete transcript of the record and proceedings, and final judgment in the case of the Mayor and Aldermen of the city of Mobile, against William R. Hallett, Executor of Joshua Kennedy, deceased, decided in said Supreme Court, at the June term, 1839, of said Court; as also a copy of the bond for the writ of error sued out in said cause to the Supreme Court of the United States.

In testimony whereof I have hereunto set my hand, and af-
[L. S.] fixed the seal of said Court this 21st day of October, 1840.

JAMES B. WALLACE,
Clerk of the Supreme Court of the State of Alabama.

THE MAYOR AND ALDERMEN of Mobile,
vs.
The Ex'r. of JOSHUA KENNEDY.

Copy of an opinion delivered on the day of June, 1839, by Chief Justice Collier:

The opinion delivered in the case of the Mayor and Aldermen of Mobile *vs.* Eslava, at this term, is decisive of the present. The consequence is, that the judgment of the Circuit Court is free from error and must be affirmed.

COLLIER.

A Copy.

Test: JAMES B. WALLACE,
Clerk of the Supreme Court
of the State of Alabama.

Filed 9th March, 1841.